

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 2898 OF 2016
IN
APPEAL (L) NO. 367 OF 2016
IN
COMPANY PETITION NO. 488 OF 2015

Elder Pharmaceuticals Limited	.. Appellant
V/s	
Puspasen C. Jhaveri	.. Respondent

Mr. Ali Abbas Delhiwala with Mr. Kaushal Parsekar i/b Joy Legal Consultants for the appellant.

Mr. K.K. Shroff i/b Jayesh Desai & Associates for the respondent.

**CORAM: DR. MANJULA CHELLUR, CJ. &
M.S. SONAK, J.**

DATE : 13th OCTOBER 2016

P.C.:

The respondent herein approached the Company Court contending that after accepting the deposit of Rs.25,00,000/- for a period of 90 days from 20th March 2013 to 18th June 2013, in spite of promissory note executed by the appellant Company, neither the principal amount nor the interest accrued on the said deposit lent to the appellant came to be paid. As on the date of presenting the petition, at the time of statutory notice, a sum of Rs.26,12,500/- was due in July 2014. By this time, it must be about Rs.34-35 lakhs.

2. Learned counsel for the appellant relying on the judgment of Madras High Court in the case of ***NEPC India Limited vs. Indian Oil Corporation Ltd., 2009 LawSuit (Mad) 1292*** and another judgment of Madhya Pradesh High Court (Indore Bench) in the case of ***Kailash Prasad Mishra vs. Medwin Laboratory petitioner. Ltd., 1988 Vol.63 Company Cases 81***, seeks stay of the impugned order contending that a drastic step ought not to have been taken by the Company Court by appointing Provisional Liquidator.

3. Learned counsel for the respondent brings to our notice that the very same appellant challenged the admission of Company Petitions by filing several appeals and subsequently withdrew the same and the liquidation proceedings are pending before the Company Court, which is fairly admitted by the learned counsel for the appellant. The learned counsel for the appellant was fair enough to state, on instructions, that the dues to be paid by the appellant is Rs.550 crores. Though the proceedings under section 138 of the Negotiable Instruments Act are not initiated, the fact of dishonour of cheques is seen from the discussion in the impugned order.

4. In the light of several company petitions being pending, we are of the opinion that this is not a fit case to grant stay, and

according to us, the learned Company Judge was justified in appointing the Provisional Liquidator. Accordingly, the application for stay is rejected.

(M.S. SONAK, J.)

CHIEF JUSTICE